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EXAMINER

AVERY, BRIDGET D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 27

MAILED

Application Number: 09/126,194
Filing Date: July 30, 1998
Appellant(s): Vanderminden, William

MAR 25 2002

GROUP 3600

Francis C. Hand
For Appellant

EXAMINER'S ANSWER

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This is in response to appellant's brief on appeal filed January 3, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-7, 9-11, 13, 15-21, 23 and 24.

Claims 8, 12, 14 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

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(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct.

The rejection of claims 1-17 under 35 USC 112, second paragraph, has been withdrawn.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 9 do stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 2 and 3 do stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claim 4 stands alone and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 5, 6, 10 do stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 7, 8 and 11-14 do stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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Appellant's brief includes a statement that claims 15-17 do stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claim 18 stands alone and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claim 19 stands alone and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claim 20 stands alone and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 21 and 22 do stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claim 24 stands alone and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

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1,087,878	Harrah	2-1914
3,215,096	Holtz	11-1965
3,295,475	McClellan	1-1967
4,865,346	Carlile	9-1989
3,099,356	Burnett	7-1963
5,308,012	Fuller	5-1994
2,720,402	Puy et al.	10-1955

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

The rejection of the claims in view of Berthier is being withdrawn to reduce the issues for appeal.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrah (US Patent 1,087,878).

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Harrah discloses a collapsible wheeled tray a rectangular skeletal body frame (20, 21, 12, 13); a pair of leg frames (1, 2), each leg frame being releasably connected (see releasable nuts in figure 1) to the body frame (20, 21, 12, 13) at an opposite side from the other leg frame to support the body frame (20, 21, 12, 13) on a support surface; and, a table top (19) releasably connected to (via the box-shaped body frame) and across the leg frames (1, 2) in vertically spaced relation to the body frame (20, 21, 12, 13). Note, the rectangular box-shaped skeletal structure is shown in figures 1 and 2. The connecting means are integrated in the body frame as shown at (21), and in the leg frames (1, 2), located at the hole to receive frame portions (12, 13). See figure 1. Contrary to appellant's remarks regarding structure that constitute a frame, Webster's II New Riverside University Dictionary defines a frame as "something made up of parts fitted and joined together". Contrary to appellant's remarks regarding the table top (19), the table top (19) is releasably connected to and across the leg frames (1, 2) via frame portion (21) and is clearly shown to be in vertically spaced relation (positioned above) to the frame, as shown and described by Harrah in column 2, lines 3-10. Note, elements stacked on top of each other are "vertically spaced" apart. Regarding the releasable connection between the leg frames (1, 2) and the body frame (20, 21, 12, 13), note the releasable nut fasteners connecting the leg frames (1, 2) to the frame portions (12, 13). (See figure 1). Contrary to appellant's remarks regarding claim 18 and the box-shaped skeletal structure of the combined rods (12, 13) and arms (20, 21), the left side of the cart shown in Figure 1 clearly shows a rectangular box-shaped structure. The Examiner notes the

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Webster's II New Riverside University Dictionary definition of skeletal as 2: "a supporting structure or frame work".

Claims 1-3 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Holtz (US Patent 3,215,096).

Holtz discloses a serving cart including a skeletal body frame (20); a pair of leg frames (10, 12), each leg frame (10, 12) being releasably connected (see figure 2) to the body frame (20) at an opposite side from the other leg frame to support the body frame (20) on a support surface; a table top (18) releasably connected to and across the leg frames (10, 12) in vertically spaced relation to the body frame (20); a horizontally disposed floor plate (56) removably mounted in the body frame (20) to provide a shelf; and wheels (16) on the leg frames. Note, as broadly claimed, the device teaches a body frame (20) having a "rectangular" box-shaped skeletal structure. Contrary to appellant's remarks, the cart of Holtz clearly shows leg frames releasably connected to opposite sides of the body frame (20). Appellant's attention is directed to Figures 1 and 2 which clearly shows leg frames (10, 12) releasably connected to a right side and a left side of body frame (20). Contrary to appellant's remarks regarding the connection of the table top (18), Figure 2 clearly shows the table top (18) releasably connected (via clips 42, 44 mounted on the table top and via the cross braces 22, 24 mounted on the leg frames) to the leg frames. Contrary to appellant's remarks regarding claim 18 and the box-shaped skeletal structure of the body frame (20), the body frame of Holtz clearly meets Webster's

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New Collegiate Dictionary definition of a box (b: something having a flat bottom and four upright sides...), **as noted by the appellant** in the appeal brief on page 12 (i.e. the body frame clearly has a bottom as referenced by number 56 and the rectangular wire frames (48, 50) are the four upright sides).

Claims 1, 2, 13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by McClellan (US Patent 3,295,475).

McClellan discloses a knock down table including a skeletal body frame (24); a pair of leg frames (42, 43), each leg frame (42, 43) being releasably connected (see figure 1) to the body frame (24) at an opposite side from the other leg frame to support the body frame (24) on a support surface; a table top (20) releasably connected to and across the leg frames (42, 43) in vertically spaced relation to the body frame (24); a pair of vertically disposed spacers (34) on the body frame (24), a vertical plate (48) at each side of the leg frames (42, 43); and, each leg frame (42, 43) has a pair of horizontal outwardly disposed arms and the table top rests on the arms. Appellant's remarks found in the appeal brief on page 11, lines 21-23, appear more specific than the claim. Claim 1 fails to recite frame members "connected to each other". Contrary to appellant's remarks regarding the table top (20), the table top (20) is releasably connected to and across the leg frames (42, 43) and is clearly shown to be in vertically spaced relation (positioned above) to the frame. Note, elements stacked on top of each other are "vertically spaced" apart. Contrary to appellant's remarks, the channel members (24) clearly

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constitute a rectangular box-shaped skeletal structure, as broadly claimed by appellant. The Examiner notes the Webster's II New Riverside University Dictionary definition of skeletal as 2: a supporting structure or frame work. Regarding claim 13, the table top (20) rest on the horizontal arms of the leg frames, as broadly claimed by appellant, via body frame (24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtz ('096) in view of Puy et al. (US Patent 2,720,402).

Holtz discloses the claimed invention except for leg frames including a plate and vertical slots. It would have been obvious to one having ordinary skill in the art at the time of the appellant's invention was made to include a plate and vertical slots since the examiner takes Official Notice of the equivalence of the claimed plate with slots and the disclosed clips for their use in the connection art and the selection of any of these known equivalents to provide a

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releasable connection would be within the level of ordinary skill in the art. As evidence by this, Puy et al. teaches a serving cart having a slotted vertical plate connecting leg frames to a body frame. Based on the teachings of Puy et al., the provision of vertically spaced slots, at the time of the appellant's invention, would have been within the level of ordinary skill in the art for height adjustment. Therefore, contrary to appellant's remarks, one having ordinary skill in the art would connect the leg frames to the body frame of Holtz using vertically disposed spacers and a vertical plate.

Claims 4 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtz ('096) in view of Carlile ('346).

Holtz discloses the serving cart described above.

Holtz fails to show a pair of guides to define a recess to receive a cooler.

Carlile discloses a collapsible cart including a shelf having apertures and locking means on two opposite sides of the shelf that define a recess within the top and bottom sides of the shelf to receive the legs of a cooler therein.

Based on the teachings of Carlile, it would have been obvious to one having ordinary skill in the art to modify the floor plate of Holtz to include a means of securing a cooler therein to facilitate ease in serving iced tea. With regard to appellant's remarks regarding the modification of Holtz to include guides on two opposite sides to secure a cooler, one having ordinary skill in the art would take the old and well known teaching of Carlile and modify a

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beverage serving cart to accommodate a cooler, for convenience. Appellant's claim recitation of "to define a recess with one other side of the body frame" is intended use and is also clearly met by the combination of Holtz and Carlile. The provision of guides and a cooler on the cart of Holtz would define a recess with one other side of the body frame (i.e. the side opposite of the cooler).

Claims 7, 11, 13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtz ('096) in view of Burnett (US Patent 3,099,356).

Holtz discloses the features described above.

Holtz fails to show a leg frames having outwardly disposed arms.

Burnett discloses a folding serving cart having a similar structure as Holtz. The cart of Burnett including leg frames (4, 5, 6, 7) having outwardly disposed arms (15, 16) and a table top (2) resting on the arms (15, 16).

Based on the teachings of Burnett, it would have been obvious to one having ordinary skill in the art, to modify the cart of Holtz to include outwardly disposed arms on the leg frames upon which the table top rest to further support the table top. With respect to claim 11, it would have been obvious to one having ordinary skill in the art, at the time of the appellant's invention, to make one arm longer than another, since a mere change in size would be considered within the level of one of ordinary skill in the art. See In re Rose, 105 USPQ 237. Contrary to appellant's remarks (found on page 18 of the brief), the arms (15, 16)

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of Burnett are clearly shown as being directed outwardly with respect to upper tray (2). The examiner also notes that the upper tray of Burnett also projects farther on one side, with respect to the leg frames, than the other; and, provides a shelf to one side of the bar cart which permits a person to stand close to the table top without stepping on the bar cart and also permits a stool to be placed adjacent to the table top for seating purposes.

Claims 5, 10, 11, 15-17, 19, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClellan ('475) in view of Puy et al. (US Patent 2,720,402).

With respect to claims 5, 10, 17 and 19, McClellan discloses the claimed invention except for leg frames including a plate with a pair of vertical slots. It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to include a plate and vertical slots since the examiner takes Official Notice of the equivalence of the claimed plate with a pair of slots and the disclosed plate with large single slot for their use in the connection art and the selection of any of these known equivalents to provide a releasable connection would be within the level of ordinary skill in the art. With respect to claims 15, 16 and 24, McClellan discloses the claimed invention except for a second pair of rectangular frames. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second pair of rectangular frames, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. See *In re Harza*, 124 USPQ 378. In response to appellant's remarks regarding

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claims 5, 10, 16, 17 and 19, one having ordinary skill in the art would notice the vertically disposed spacers (34) and the single slot plate member (48). Contrary to appellant's remarks, one having ordinary skill in the art would connect the leg frames to the body frame of McClellan using the vertically disposed spacers (34) and a vertical plate with slots. As evidence by this, Puy et al. teaches a serving cart having a slotted vertical plate connecting leg frames to a body frame. Based on the teachings of Puy et al., the provision of vertically spaced slots, at the time of the appellant's invention, would have been within the level of ordinary skill in the art for height adjustment. In response to appellant's remark regarding claims 11 and 21, the outwardly disposed arms are clearly shown on the leg frames (42, 43) of McClellan in Figure 1. In response to appellant's remarks regarding claims 15 and 24, one having ordinary skill in the art would duplicate the essential working part of an invention to provide alternate orientations to accommodate various uses, as suggested by McClellan in column 2, lines 32-70.

Claims 9 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClellan ('475) in view of Fuller (US Patent 5,308,012).

McClellan discloses the features described above.

McClellan fails to show a fabric strip.

Fuller discloses a hand truck having a base strip (40) disposed about the holder (28).

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Based on the teachings of Fuller, it would have been obvious to one having ordinary skill in the art, at the time of the applicant's invention, to modify the cart of McClellan to include a fabric strip for aesthetic purposes. In response to appellant's remarks, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the strip from fabric, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. See *In re Leshin*, 125 U.S.P.Q. 416.

(11) *Response to Argument*

Arguments as addressed, above.


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

B.A.
March 21, 2002

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